

Appl. No. 10/825,166

Reply to Office Action of July 29, 2005

**REMARKS/ARGUMENTS**

**I. Summary of Examiner's Office Action**

The Examiner objected to the specification as failing to provide proper antecedent basis for the subject matter of claim 10. The Examiner rejected claims 1 and 3-11 under 35 U.S.C. §103(a) as being unpatentable over Fletcher U.S. Patent No. 4,481,242 ("Fletcher") in view of DeGaris U.S. Patent No. 6,357,964 ("DeGaris"). The Examiner considered Applicant's previously submitted arguments, but considered them moot; however, the Examiner did note that the rocks in Fletcher may be considered "attached" to the plastic strip because the rocks and the strip make contact.

**II. Applicant's Reply to the Examiner's Objection  
for Failure to Provide Proper Antecedent Basis**

The Examiner objected to the specification as failing to provide proper antecedent basis for the claimed subject matter. Specifically, the Examiner asserted that there was no antecedent basis in the specification for the "plurality of transverse, flexible, hollow plastic tubes" of claim 10. Applicant respectfully traverses the objection.

In the specification, as originally filed, the first full paragraph on page 7/11 begins, "[o]ne can even conceive that in

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the case of irrigation or drainage ditches ...", and describes a variation of the invention designed for such uses. The description of this embodiment includes "transverse tubes" which "are filled with the appropriate aggregate at the time of installation." Cement, which is named in that paragraph as one possible material that can fill such tubes, is said to have "the advantage, after hardening, of providing a rigid structure fitting exactly the contours of the ditch." The next paragraph, which discusses the same embodiment, begins with the phrase "[w]hen plastic tubes are utilized ..."

Obviously, if the aggregate can harden in such a way as to cause the transverse tubes to exactly fit a ditch's contours, the tubes must initially have been flexible. Furthermore, the tubes must be hollow if they are able to be filled with aggregate. Such description clearly provides an antecedent basis for "a plurality of transverse, flexible, hollow plastic tubes", as claimed in the currently amended claim 10.

Accordingly, at least for the reasons set forth above, Applicant respectfully requests that the Examiner's objection to the specification for failure to provide proper antecedent basis for the claimed subject matter be withdrawn.

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III. Applicant's Reply to the Examiner's Rejection  
of Claims 1 and 3-11 under 35 U.S.C. §103(a)

The Examiner has rejected claims 1 and 3-11 under 35 U.S.C. §103(a) as being unpatentable over Fletcher in view of DeGaris. Applicant respectfully traverses the rejection.

According to the Examiner, Fletcher discloses an aquatic weed barrier comprising a strip of plastic films having a plurality of gas release ports, which may be slits or holes, and a transverse hold down means/heavy ballast/rocks attached/positioned thereon; the strip is located longitudinally and the polymeric/plastic film has an inherent toughness for withstanding the abrasive action of water and rocks. The Examiner further states that DeGaris discloses a drainage system with a membrane cover having a plurality of tubular-shaped weights flexibly connected to one another to hold down the cover.

The Examiner asserts that in view of DeGaris, it would have been obvious to one of ordinary skill in the art to replace the hold down means with tubular shaped weights "in order to hold the tubular weight together with side-by-side relationship for equal distribution of the holding weight." Furthermore, the Examiner asserts that the dimensions and placement of Applicant's plastic strip, in order to effectively cover the area to be treated, would have been decided by an artisan with

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ordinary skill in the art; that it would have been obvious to use a polymeric material with a specific gravity of one or less; and that it also would have been obvious to fill the weights of DeGarie with sand, cement or aggregate to enhance the stability of the cover under inclement weather.

First of all, the Examiner has chosen to ignore virtually all arguments submitted in Applicant's previous Response, calling them "moot" in view of supposedly new grounds of rejection. Actually, instead of new grounds for rejection, the Examiner has simply used a different combination of two of the same references cited in his previous Office Action, together with a number of baseless assertions that various elements of the present invention would have been obvious to one of ordinary skill in the art. This fact alone should indicate a lack of any actual grounds for rejecting the claims of the present application. The one argument addressed by the Examiner was that the heavy objects, such as rocks, used by Fletcher to hold the barrier in place are not "attached" to the barrier. The Examiner does consider the rocks and the barrier attached, merely because they make contact. However, it is clear from Applicant's specification that the present invention contemplates hold down means that are fixed to a plastic strip. In order to eliminate any confusion, Applicant has amended claim

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1 by replacing the word "attached" with "fixed", removed the word "attached" from claim 5, and inserted language in claim 10 similar to that in claim 1 indicating that the tubes are integral with or fixed to the plastic strip.

Claim 1 of the present application, as amended, teaches an aquatic weed suppression means comprising a strip of plastic having a specific gravity of one or less and a plurality of spaced apart, transverse hold down means which are integral with or fixed to the plastic strip and run substantially its entire width. Claim 10 of the application, as amended, teaches a weed suppression means comprising a strip of plastic and a plurality of transverse, flexible, hollow plastic tubes which are integral with or fixed to the plastic strip along its width and which may be filled with a material that will hold the plastic strip in close proximity to the contour of a ditch. Only claims 5, 10 and 11 refer to hollow tubes as hold down means; all other claims are dependent on claim 1 and make no mention of hollow tubes. However, since the Examiner's rejection is based upon Fletcher in view of DeGarie, and DeGarie is referenced by the Examiner for the purpose of replacing Fletcher's hold down means with "tubular shaped weight", it would appear that this rejection only applies to Claims 5, 10 and 11. In fact, those are the exact claims for which DeGarie was cited in the previous

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Office Action. Furthermore, the Examiner cannot mean that the remaining claims are unpatentable over Fletcher alone, since the current grounds for rejection supposedly are "new", and all remaining claims were rejected as unpatentable over Fletcher in the prior Office Action, to which Applicant's responsive arguments were deemed "moot".

Even if the Examiner had intended that DeGarie be applied to all of the claims which remain in the present application, neither Fletcher, DeGarie, nor the combination of both references teaches, claims, or even suggests most of the elements of the inventions set forth in independent claims 1 and 10, or any of the claims dependent thereon which contain all limitations thereof.

Looking first at claim 1, the Examiner has not established that any elements of the claimed invention are taught or suggested in the prior art. The plastic strip of the present invention has a specific gravity of one or less. This serves an important function - it allows the strip to rise up above the aquatic bed at all points on the strip that are not adjacent to any hold down means. The effect achieved is that sediment does not settle all over the surface of the plastic strip, but instead slides down to and at the hold down means. This allows decomposition gases to escape unhindered through release ports

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and/or at the edges of the plastic strip between the hold down means.

The Examiner stated that it would have been obvious to one of ordinary skill in the art to alter the invention taught by Fletcher by providing a specific gravity of one or less. However, doing so would render Fletcher's invention inoperable, or at the very least, extremely difficult to install. Fletcher does not have any hold down means fixed to the plastic strip. The strip sinks to the aquatic bed because of its own weight and density. Once there, it can be further secured by rocks or the like. If Fletcher's invention had a specific gravity less than that of water, it would not sink. The installer would have to physically push and hold down the strip, one segment at a time, under water, and then place a rock on that segment before moving on to the next. "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." MPEP § 2143.01, citing In re Gordon, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). It should also be noted that this assertion by the Examiner was also made, almost word-for-word, in the previous Office Action. Applicant responded to the assertion in his last Response;

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however, despite making the same assertion again, the Examiner deemed Applicant's responsive arguments "moot".

The invention in Applicant's claim 1 also comprises transverse hold down means that are integral with or fixed to the plastic strip. As discussed above, this greatly eases installation of the invention, and allows decomposition gases to escape between hold down means at the gas release ports or at the edges of the strip. Neither Fletcher, DeGarie, nor the combination of the two references teaches, claims, or even suggests hold down means that are integral with or attached to the strip. By the Examiner's own admission, the heavy ballast/rocks in Fletcher merely contact the surface of the plastic strip, but are not integral with it or fixed thereto. In light of the amendments made to Applicant's claims, Fletcher can in no way still be considered to demonstrate this feature. The weights in DeGarie, while attached to one another, are not integral with or attached to the strip either. Therefore, this element of Applicant's invention also has not been taught, claimed, or suggested by any of the cited prior art.

Turning to Claim 10, the Examiner appears to make two applicable arguments - that in view of DeGarie, it would have been obvious to one of ordinary skill in the art to use side-by-side tubular weights, and that it would have been obvious to



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modify DeGarie by filling the tubes with a conventional heavy fill material. The reasons given by the Examiner as to why each of these modifications would have been obvious are, respectively, "for equal distribution of the holding weight" and "to enhance the stability of the cover under the weather inclement."

The mere fact that these are the reasons the Examiner believes such modifications could have been made, in fact, proves that the invention in Applicant's claim 10 would not have been obvious at the time of the invention. The most notable features of claim 10 are that the tubes are (1) hollow, (2) flexible, and (3) integral with or fixed to the plastic strip. The combination of (1) and (2), i.e., having hollow, flexible tubes, serves a unique purpose. It allows the tubes to be filled with a material before or during installation of the strip and then to take on the shape of the ditch or other area upon which the strip is laid. Many different types and arrangements of hold down means could have been used to equally distribute the holding weight and to enhance the cover's stability in inclement weather. Those ends are achieved by the present invention incidentally, but it would not have been necessary, and therefore not at all obvious, to use hollow, flexible tubes to do so. The primary and intended result in the

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present invention is that the strip is held very closely to the contours of the ditch. The use of hollow and flexible tubes is not shown, taught, or even suggested by Fletcher, and it clearly would not have been obvious at any time to modify Fletcher to achieve the desired results. There simply has been no objective reason given that the references should be combined to achieve these results. MPEP § 2143.01. Furthermore, as to (3) the fact that the flexible, hollow tubes are integral with or fixed to the strip, as discussed above, the Examiner has not pointed to any prior art or made any claim of obviousness regarding this feature, which greatly eases installation of the invention.

Fletcher fails to teach, claim or even suggest a plastic strip having a specific gravity of one or less or hold down means that are integral with or fixed to the strip, as in Applicant's claim 1, DeGarie does not cure such failure, decreasing the specific gravity of the strip could not have been obvious because it would have rendered Fletcher unsatisfactory for its intended purpose, and no arguments at all have been presented regarding hold down means that are integral with or fixed to the strip. Accordingly, at least for the reasons set forth above, Applicant respectfully asserts that independent claim 1 is patentable over Fletcher in view of DeGarie under 35 U.S.C. §103(a). Moreover, dependent claims 3-9 depend from

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claim 1, and therefore include all limitations thereof.


Fletcher also fails to teach, claim or even suggest flexible, hollow tubes as hold down means or having such tubes integral with or fixed to a plastic strip, as in Applicant's claim 10, DeGarie does not cure such failure, there nevertheless would have been no objective reason to combine the teachings of DeGarie with those of Fletcher, and again, no arguments have been presented regarding hold down means that are integral with or fixed to the strip. Accordingly, at least for the reasons set forth above, Applicant respectfully asserts that independent claim 10 is patentable over Fletcher in view of DeGarie under 35 U.S.C. §103(a). Moreover, dependent claim 11 depends from claim 10, and therefore includes all limitations thereof. Applicant therefore requests that the Examiner's 35 U.S.C. §103(a) rejection be withdrawn and that claims 1 and 3-11 be allowed.

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IV. Conclusion

Applicant respectfully submits that claims 1 and 3-11 which remain in the application are in condition for allowance and, therefore, that this application is in condition for allowance. Reconsideration and allowance of the application are respectfully requested.

Respectfully submitted,

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Warren O. Grosjean  
32 Juniper Road  
Wayne, New Jersey 07470  
Tel.: (973) 839-6383